

BEFORE THE MONTANA COAL BOARD
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

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| In the matter of the proposed |) | NOTICE OF PUBLIC HEARING ON |
| amendment of ARM 8.101.201, |) | PROPOSED AMENDMENT AND |
| 8.101.301, 8.101.302, and 8.101.305, |) | REPEAL |
| and repeal of 8.101.303 and |) | |
| 8.101.311 pertaining to the policies of |) | |
| the Montana Coal Board and |) | |
| applications for Montana Coal Board |) | |
| grant assistance |) | |

TO: All Concerned Persons

1. On November 12, 2008, at 11:00 a.m., a public hearing will be held in Room 226 of the Park Avenue Building, 301 South Park Avenue, at Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., November 5, 2008, to advise us of the nature of the accommodation that you need. Please contact Ellen Hanpa, Community Development Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2779; TDD (406) 841-2702; fax (406) 841-2771; or e-mail ehanpa@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

8.101.201 INCORPORATION OF MODEL RULES (1) The Coal Board adopts and incorporates by reference the Attorney General's Model Rules of Procedure. ~~The model rules are found at as stated in ARM 1.3.101 through 1.3.202, and 1.3.211 through 1.3.233, and the Secretary of State's model rules as stated in ARM 1.3.101, 1.3.102, and 1.3.301 through 1.3.313 with the exceptions contained in this subchapter.~~

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

REASON: The board proposes to amend this rule to correct the reference to the rules recently amended and transferred by the Secretary of State.

8.101.301 POLICY STATEMENT (1) The Coal Board must ~~adopt rules governing its proceedings,~~ prescribe forms for grant applications, receive and

consider applications for grants, and award grants to local governmental units, federally-recognized Indian tribes, school districts, and state agencies to assist local governmental units in meeting the local impact of coal development or decline by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development or decline.

(2) remains the same.

AUTH: 90-6-205, MCA

IMP: 90-6-205, MCA

REASON: The board is proposing amendment of ARM 8.101.301 to remove the requirement that it formally adopt its internal management procedures as administrative rules.

8.101.302 PRE-APPLICATION FORM (LIF 1-75) (1) The purpose of the pre-application form is to evaluate applicants for coal impact assistance and to establish priorities among those who may qualify for grants. Items to be considered include, but are not limited to, are a description of the proposed project, estimated cost, proposed budget, projected completion date, and the projects project's relationship to coal development, the applicant's budget, documentation of past and current local financial effort, current or on-going planning efforts related to the orderly management of the existing or contemplated growth or decline of coal impacts, and documentation of citizen participation.

(2) Applications will be evaluated based on the five criteria listed in ARM 8.101.301. The application shall be considered by the Coal Board during the next scheduled quarterly meeting after receipt of the completed application, and either be approved, denied, or tabled pending submittal of additional information to the Coal Board. The application form is available online at http://comdev.mt.gov/CDD_CB.asp.

(2) (3) ¶ The application shall include a citation to the section of the Montana Code Annotated or, in the case of a federally-recognized Indian tribe, federal statute or regulation which authorizes the applicant to make expenditures to provide for the particular proposed governmental service or facility. The pre-application form is available online at http://comdev.mt.gov/CDD_CB.asp.

(3) (4) If the applicant for a grant is a federally-recognized Indian tribe, its application must include a resolution of the tribal council or other appropriate governing body waiving the applicant's jurisdictional immunity from suit on any issue specifically arising from the transaction of a grant obtained under this subchapter and agreeing to the adjudication of any dispute arising out of the grant transaction in the district court of the first judicial district of the state of Montana. In addition, the applicant must submit proof that it has requested approval of the transaction, including the waiver of immunity, by the secretary of the United States Department of Interior or his designated agent and that the secretary or his designated agent has either approved the transaction or found that the secretary's approval is unnecessary.

(5) Coal impact grant funds used for the preparation of plans, studies, analyses, or necessary research for the preparation of a preliminary engineering

report must meet the requirements of the most current Uniform Application for Montana Public Facility Projects. Coal impact grant funds used for the preparation of a preliminary architectural report must meet the requirements described in Appendix S of the CDBG Application Guidelines for Public Facilities Projects. The Uniform Application and the CDBG Guidelines are available on the Community Development Division web site at <http://comdev.mt.gov>.

AUTH: 90-6-205, MCA
IMP: 90-6-208, MCA

8.101.305 SUBMITTAL DEADLINES (1) ~~Grant pre-applications and full~~ applications shall be submitted to the administrative officer by the first of the month preceding the month of the next quarterly meeting.

(2) and (3) remain the same.

AUTH: 90-6-205, MCA
IMP: 90-6-205, MCA

REASON: The board is proposing to amend ARM 8.101.302 and 8.101.305 to provide for a single application form and process for all applicants for Coal Board grant assistance.

4. The board proposes to repeal the following rules:

8.101.303 FULL APPLICATION FORM (LIF 2-75) found at ARM page 8-3682.

AUTH: 90-6-205, MCA
IMP: 90-6-208, MCA

8.101.311 APPLICATIONS FOR PRELIMINARY ENGINEERING REPORTS OR PRELIMINARY ARCHITECTURAL REPORTS found at ARM page 8-3684.

AUTH: 90-6-205, MCA
IMP: 90-6-205, MCA

REASON: The board is proposing to repeal these rules to provide for a single application form and process for all applicants for Coal Board grant assistance, rendering these rules extraneous.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Coal Board, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2779; fax (406) 841-2771; or e-mail ehanpa@mt.gov, and must be received no later than 5:00 p.m., November 20, 2008.

6. Kelly A. Casillas, Department of Commerce, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2731, by e-mail to lgregg@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ KELLY A. CASILLAS
KELLY A. CASILLAS
Rule Reviewer

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State October 14, 2008.